



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 07-294, MD Docket. No. 10-234; FCC 15-19]

Promoting Diversification of Ownership in the Broadcasting Services

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes improvements to the collection of data reported on FCC Form 323, Ownership Report for Commercial Broadcast Stations, and also to FCC Form 323-E, Ownership Report for Non Commercial Broadcast Stations, through the development of a new functionality in the Commission's Registration System (CORES) for issuing FCC Registration Numbers (FRNs). Specifically the Commission seeks comment on a proposal to create a new mechanism for an individual to obtain an FRN that is usable only for broadcast ownership reporting purposes through CORES.

DATES: The Commission must receive written comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by MB Docket No 07-294 and/or MD Docket No 10-234, by any of the following methods:

- Federal Communications Commission's Web Site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

FOR FURTHER INFORMATION CONTACT: Jake Riehm, Industry Analysis Division, Media Bureau, FCC, (202) 418-2330. For additional information concerning the PRA proposed information collection requirements contained in the Notice of Proposed Rulemaking, contact Cathy Williams at (202) 418-2918, or via the Internet at PRA@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rulemaking and Seventh Further Notice of Proposed Rulemaking (Second FNPRM and Seventh FNPRM) in MB Docket Nos. 07-294 and 10-234; FCC 15-19, adopted February 11, 2015, and released February 12, 2015. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554.

Summary

I. INTRODUCTION

1. The Commission has a long-standing goal of promoting ownership diversity in broadcast stations to ensure that diverse viewpoints and perspectives are available to the American people in the content they receive over the broadcast airwaves. In pursuit of this goal, the Commission has a long history of promulgating rules and regulations designed to foster diversity in terms of minority and female ownership. A necessary foundation for the Commission's rulemaking efforts is the collection of comprehensive, reliable data reflecting the race, gender, and ethnicity of the owners and other interest holders in broadcast stations. Such data are essential to study and analyze ownership trends effectively, to assess the impact of Commission rules, and to determine whether rule changes would be in the public interest. To be useful for these purposes, to the greatest extent possible the data must be capable of being read, verified, searched, aggregated, and cross-referenced electronically.

2. As a part of these efforts, the Commission herein proposes improvements to the collection of data reported on FCC Form 323, Ownership Report for Commercial Broadcast Stations, and also to FCC Form 323-E, Ownership Report for Noncommercial Broadcast Stations, through the development of a new functionality in the Commission's Registration System (CORES) for issuing FCC Registration Numbers (FRNs). Specifically, we seek comment on a proposal to create a new mechanism for obtaining an FRN through CORES. Use of this FRN would be restricted to the reporting of individual attributable interest holders in commercial and noncommercial broadcast stations on ownership reports. This "Restricted Use" FRN (RUFRN) would be supported by identifying information for attributable individuals that does not include full Social Security Numbers (SSNs) and that would be housed securely on the Commission's servers and not made available to the public. This proposal is intended to address some of the privacy and data security concerns that commenters raised with respect to prior proposals while still enabling the Commission to uniquely identify reported individuals, obtain data reflecting a more useful, accurate, and thorough assessment of minority and female broadcast station ownership in the United States and reduce certain filing burdens. Ultimately, such changes to the Commission's system could assist future initiatives promoting diverse ownership.

II. BACKGROUND

3. The Commission is engaged in ongoing efforts to improve the quality, utility, and reliability of its broadcast ownership data. As part of this endeavor, in 2009 the Commission substantially revised Form 323. The changes to the filing requirements and the modifications to the form were intended to facilitate long-term comparative studies of broadcast station ownership and to address flaws in the data collection process identified by the United States Government Accountability Office (GAO) and by researchers. "To further improve the ability of researchers and other users of the data to cross-reference information and construct ownership structures," filers were required to provide a CORES FRN for all reported interest holders.¹ To obtain a CORES FRN, with some limited exceptions, a party

¹ See generally 323 Order, 24 FCC Rcd at 5903 para. 12. See Promoting Diversification of Ownership in the Broadcasting Services, 74 FR 56135, Oct. 30, 2009; Promoting Diversification of Ownership in the Broadcasting Services, 74 FR 56136, Oct. 30, 2009 (Federal Register notices announcing OMB approval and effective date of revised Form 323). On October 16, 2009, the Commission sent a subsequent letter to OMB acknowledging the

must submit a Tax Identification Number (TIN) to the Commission via CORES. In the case of an individual, a TIN is his or her SSN. Because a CORES FRN is backed by a TIN/SSN, it can serve as a unique identifier in most instances, which is crucial to the quality and utility of the Commission's broadcast ownership data and the ability of the Commission and outside parties to search, aggregate, and cross-reference that data electronically.

4. OMB Review and Approval of 2009 Form 323. On August 11, 2009, the Commission submitted the revised Form 323, which included the CORES FRN requirement, to the Office of Management and Budget (OMB) for approval pursuant to the Paperwork Reduction Act (PRA) requirements and published the Federal Register notice initiating a 60-day comment period.² Many of the comments to OMB objected to having to report CORES FRNs for individuals holding attributable interests, arguing that in order to obtain a CORES FRN for these individuals, they would need to provide SSNs to the Commission, a requirement that they claimed triggers privacy, data security, and identity theft concerns. Commenters also suggested that obtaining and reporting CORES FRNs for these individuals would be onerous for filers, and that in some cases, filers might be unable to obtain a CORES FRN for all individual attributable interest holders because the individuals are unwilling either to obtain the FRN themselves or provide their SSN to the filer for the purpose of obtaining an FRN. Additionally, commenters criticized the Commission for failing to seek comment on requiring these individuals to obtain CORES FRNs prior to including this requirement on the revised form submitted for OMB approval.

5. On October 6, 2009, the Office of the Managing Director (OMD) at the Commission submitted a letter to OMB addressing the comments filed in response to the revised Form 323. OMD explained that requiring CORES FRNs on Form 323 is an integral part of the Commission's effort to "improve the quality, reliability, and usability of the collected data by eliminating inconsistencies and inadequacies in the data submitted." Noting that the CORES FRN is a key tool for ensuring that

Commission's action in the 323 Order to eliminate the reporting of certain nonattributable interest holders. Letter from Walter Boswell, Acting Assoc. Managing Director, PERM, OMD, FCC, to Nicholas A. Fraser, OMB (Oct. 16, 2009).

² Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested, MB Docket No. 07-294, 74 FR 40188, Aug. 11, 2009.

ownership data is matched to specific owners, OMD explained that, without the CORES FRNs, it would be unable to accurately determine an interest holder's identity when variations of a single name or other spelling irregularities appear from form to form. The Reply Letter also responded to comments that the Commission erred in concluding that the revised Form 323 did not implicate the Privacy Act. OMD stated that because sole proprietors, officers, and directors are acting in an entrepreneurial role with respect to broadcast stations, these persons are not individuals for purposes of the Privacy Act. OMD added that, to the extent that the revisions raise any privacy concerns, the Commission created a Privacy Act System of Records (SORN) for Form 323 that would address them.³ The Reply Letter also rejected allegations that the Commission failed to comply with the notice requirements of the PRA. OMD also disputed commenters' objections that the CORES FRN requirement raised security and identity theft concerns. OMD noted that "none of the commenters identify a single instance of a security breach" of the CORES system. The Commission utilizes a "robust security architecture . . . for CORES that exceeds Federal guidelines and recommendations" and has deployed operational controls that comply with National Institute of Standards and Technology guidance. OMD stated that its servers are securely located, that its databases are behind several firewalls, and that all servers and communications are monitored. The Reply Letter also notes that administrative access to the CORES application is limited and that all transmission of non-public data is encrypted.

6. On October 19, 2009, OMB approved the revised Form 323, including the requirement that filers provide a CORES FRN for all individuals and entities holding an attributable interest in the licensee.⁴ After several delayed filing deadlines, the Commission set July 8, 2010 as the first biennial filing deadline using the revised Form 323. In response to industry concerns about filers' ability to obtain CORES FRNs for all individual interest holders due to individuals' concerns about privacy, security, and

³ *Id.* at 7-8. The Commission issued a System of Records Notice to cover the data contained in responses to Form 323 that became effective on December 21, 2009. Privacy Act System of Records, 74 FR 59978, Nov. 19, 2009 (system of records FCC/MB-1).

⁴ See Promoting Diversification of Ownership in the Broadcasting Services, 74 FR 56135, Oct. 30, 2009; Promoting Diversification of Ownership in the Broadcasting Services, 74 FR 56136, Oct. 30, 2009 (*Federal Register* notices announcing OMB approval and effective date of revised Form 323). On October 16, 2009, the Commission sent a subsequent letter to OMB acknowledging the Commission's action in the 323 MO&O to eliminate the reporting of certain nonattributable interest holders. Letter from Walter Boswell, Acting Assoc. Managing Director, PERM, OMD, FCC, to Nicholas A. Fraser, OMB (Oct. 16, 2009).

identity theft, the Media Bureau allowed filers, as an interim measure, to obtain a “Special Use” FRN (SUFRN) for one or more reported individuals in lieu of obtaining a CORES FRN. When clicking a button on the electronic version of Form 323 to generate a SUFRN, filers were advised via a pop-up box that “[i]f, after using diligent and good-faith efforts” a filer is unable to obtain a social security number from an individual that must be reported on Form 323 in order to generate a CORES FRN, the filer may elect to automatically generate in the electronic Form 323 a SUFRN for that individual. The respondents were also informed that those who use a SUFRN on Form 323 would be deemed to be fully compliant with the filing obligations and the lack of a CORES FRN would not subject a filer to enforcement action. An individual does not submit an SSN, or any other identifying information, to the Commission when he or she generates a SUFRN, and SUFRNs are not stored within CORES. Each individual must obtain only one SUFRN and must use it consistently on all broadcast ownership reports. Filers submitted reports on the revised version of Form 323 during the 2009, 2011, and 2013 biennial filing periods, and SUFRNs were available to filers during all three biennial filing rounds.

7. Quality of Data in Form 323 Biennial Reports. In July 2011, the U.S. Court of Appeals for the Third Circuit, as part of its review of the Commission’s media ownership rules, vacated and remanded certain aspects of the Diversity Order; an Order in which the Commission adopted measures intended to promote minority and female ownership of broadcast stations. The Third Circuit concluded that the Commission’s decision to adopt a revenue-based eligible entity definition to facilitate ownership diversity was arbitrary and capricious because the Commission did not show how determining eligibility for particular programs and preferences based on such a definition specifically would assist minorities and women, who were among the intended beneficiaries of the action. The court also remanded each of the measures adopted in the Diversity Order that relied on the eligible entity definition. The court found that the eligible entity definition was not supported by “data attempting to show a connection between the definition chosen and the goal of the measures adopted – increasing ownership of minorities and women,” stressing that regulations seeking to increase ownership by women and minorities must be based upon reliable data. The court stated that, “[a]t a minimum, in adopting or modifying its rules, the FCC must

‘examine the relevant data and articulate a satisfactory explanation for its action[,] including a rational connection between the facts found and the choice made.’” The court also made plain that “[i]f the Commission requires more and better data . . . it must get the data.” The court stated that the actions taken in the 323 Order and Fourth Diversity Further Notice to reliably analyze minority and female ownership “will, however, lay necessary groundwork for the Commission’s actions remand.”

8. On November 14, 2012, the Media Bureau released the first electronic analysis of commercial broadcast ownership data submitted pursuant to the revised biennial reporting requirements for 2009 and 2011 (2012 323 Report). On June 27, 2014, the Bureau released a similar, second report for 2013 ownership data (2014 323 Report). The data contained in these reports are “snapshots” of the status of minority and female ownership of commercial television, radio, Class A television, and LPTV stations and represent the first three of a planned series of biennial “snapshots” that can be used for trend analysis. Preparation of the reports revealed continued difficulties with, and errors within, the Commission’s broadcast ownership data. Many commercial broadcast stations submitted reports with apparently inaccurate or insufficient data to permit electronic calculation of voting interests. Commission staff required numerous broadcasters to correct errors contained in their biennial Form 323 filings via amendments, which allowed stations covered by those reports to be properly categorized for the report. In addition, Commission staff manually analyzed a large number of ownership reports, together with other available information, in order to assign certain stations to the appropriate categories manually for purposes of the report. As the 2012 323 Report stated, many data problems stemmed, in part, from the “complexity of the information required to accurately file” Form 323.

9. The Media Bureau’s Consolidated Database System (CDBS) reflects that for each filing round, more than one quarter of the unique FRNs provided for individuals were SUFRN. Further, a combined analysis of the 2009, 2011, and 2013 filing rounds shows that more than 30 percent of the total unique FRNs reported were SUFRNs and the rate at which filers obtained and reported new SUFRNs for individuals was higher than the rate at which they obtained and reported new CORES FRNS. In addition, it appears that single SUFRNs have been used for multiple individuals and that single individuals have

used multiple SUFRNs despite Bureau guidance to the contrary. Because it is possible for filers to improperly report SUFRNs for individuals – either by reporting multiple SUFRNs for a single individual on multiple reports or using the same SUFRN for multiple individuals on multiple reports – the number of unique SUFRNs reported during a given filing period cannot be relied on to determine accurately the number of individuals using a Special Use FRN. The Media Bureau therefore cannot confidently determine the number of individuals reporting a SUFRN.

10. On December 3, 2012, the Commission issued a Public Notice in the 2010 Quadrennial Regulatory Review proceeding offering parties the opportunity to comment on the 2012 323 Report (2012 323 Report PN). The notice broadly sought “additional comment on data contained in [the 2012 323 Report],” specifically referencing the Commission’s efforts “to improve its collection and analysis of broadcast ownership information” and make “improvements to the reliability and utility of the data reported in FCC Form 323.” Some commenters expressed concern that the Commission’s incomplete and inaccurate ownership data render it difficult to track broadcast ownership trends from 2009 and 2011 accurately. One commenter suggested that the manner in which the Commission currently provides broadcast ownership data from Form 323 to the public does not meet the objective that such data be capable of being electronically searched, aggregated, or cross-referenced.

11. On June 27, 2014, the Commission solicited comment concerning the 2014 323 Report as part of its 2014 Quadrennial Review Proceeding. In response, commenters acknowledged that the Commission has taken steps to improve the quality of its broadcast ownership data. Nonetheless, some parties suggested that the Commission should do more to make its broadcast ownership data easier to use, search, aggregate, and cross-reference electronically, for the benefit of studies and analysis. Some commenters supported elimination of the use of SUFRNs to ensure accuracy, reliability, and usefulness of the data.

12. Proposals Related to Noncommercial Broadcast Stations. The Commission has put forth several proposals that remain pending to improve the broadcast ownership reports focused on making the data more comprehensive, reliable, and less burdensome to collect. For instance, the Fourth Diversity

Further Notice, which accompanied the 323 Order, generally sought comment on whether to adopt the same or similar modifications for Form 323-E for noncommercial stations (NCEs) as the 323 Order imposed for commercial stations. The Notice specifically sought comment on the proper definition of “ownership” in the NCE context, asking whether looking at the composition of the board of directors or other governing body of an NCE station would be appropriate for determining “ownership” for Form 323-E purposes. Several commenters support this approach, noting, for example, that board members have legally cognizable duties to the licensees they serve and often are involved in station operations and hiring decisions, have final authority over NCE licensees, and are responsible to the local communities they serve. This approach is consistent with the Commission’s attribution standards, which attribute ownership interests to officers and directors of NCE stations. Other commenters argue that dissimilarities between the governance of commercial and NCE stations preclude any definition of “ownership” in the NCE context. These parties note that board members do not have equity stakes in the stations they serve; are often governmental officials, governmental appointees, individuals elected by station members, or volunteers; and often are not involved in day-to-day station operations. The Fourth Diversity Further Notice also asked for input concerning the burden of providing race and gender information on Form 323-E. Several commenters argue that requiring the collection and reporting of such information would be unduly burdensome and might discourage board participation. Other commenters argue that the collection of such information is minimally burdensome and agree that such information is necessary to construct a complete picture of minority and female participation in broadcasting.

13. On January 3, 2013, the Commission released its Sixth Diversity Further Notice. It specifically proposed extending the CORES FRN requirement to all listed interest holders on Form 323-E if the filing modifications proposed in the Fourth Diversity Further Notice are implemented. The Sixth Diversity Further Notice tentatively concluded that obtaining and reporting a CORES FRN for individuals identified on Form 323-E is not burdensome and sought comment. Some commenters believe that the public interest benefits associated with compiling comprehensive data on this segment of the broadcast industry outweigh any burdens associated with such a plan. Several commenters argue that the

requirement would be unduly burdensome for NCEs and that it would discourage people from serving on the boards of NCE stations. Parties also state that licensees may have difficulty obtaining SSNs from board members, some of whom are appointed governmental officials. In addition, certain commenters suggest that a CORES FRN is insufficient as a unique identifier because, for example, (1) multiple FRNs can be obtained for a single TIN/SSN, (2) an individual can in certain circumstances obtain a CORES FRN without providing an SSN, (3) an individual may provide an incorrect SSN, either intentionally or inadvertently, and (4) researchers outside the Commission do not have access to the TIN information in CORES to permit them to use it as an underlying unique identifier. Citing the Privacy Act, multiple commenters object to a requirement that noncommercial attributable interest holders obtain a CORES FRN for Form 323-E filings because it requires submission of an SSN.

14. Use of CORES FRNs Versus Use of SUFRNs. The Sixth Diversity Further Notice also sought comment on the Commission's requirement that commercial entities filing Form 323 provide a CORES FRN for attributable interest holders. The Commission tentatively affirmed its prior determination that the use of CORES FRNs was crucial to unique identification on Form 323 and that such unique identification is essential to providing the kind of searchable and manipulable database needed to support accurate and reliable studies of ownership trends. It tentatively concluded that the reporting of CORES FRNs on Form 323 was superior to the reporting of SUFRNs and proposed eliminating the availability of SUFRNs. The Commission reasoned that SUFRNs do not provide a reliable means of linking a reported interest holder to a unique individual and the continued use of the SUFRN undermines the Commission's efforts to "accurately ascertain the nature and extent of minority and female ownership of broadcast properties." Acknowledging that the Third Circuit in Prometheus II highlighted the importance of reliable data to support rulemaking initiatives, the Sixth Diversity Further Notice asked for comments on the importance of the CORES FRN as a unique identifier for quality, cross-referencing, and searchability purposes. The Commission also asked whether it should continue to permit filers to use the SUFRN in the event that reportable individuals are unwilling to provide their SSN to a third party or unwilling to obtain and provide a CORES FRN. The Commission encouraged

commenters to offer alternative proposals to the SUFRN. The Commission also invited comment on its tentative conclusion that the Privacy Act does not prohibit adoption of the CORES FRN proposal and asked commenters to discuss the degree of the risk to privacy the proposal poses.⁵

15. In response to the Sixth Diversity Further Notice, some commenters support the Commission's proposal to eliminate the SUFRN, arguing that requiring CORES FRNs "is a necessary step" to compiling complete and searchable data. These commenters also suggest that the availability of the SUFRN contributed to the instances of incomplete data that prevented the Media Bureau from identifying ownership interests in some stations that submitted biennial ownership reports during the 2009 and 2011 reporting periods. No commenters offered any alternative to the CORES FRN other than the SUFRN, and no commenters seriously contend that the SUFRN provides similar data quality as CORES FRNs. Instead, some commenters argue that even a CORES FRN cannot serve as a unique identifier because, for instance, the CORES system allows filers to obtain multiple FRNs and because outside researchers do not have access to the underlying TIN as a unique identifier. Also, while some commenters support the Commission's conclusion that a unique identifier is essential to allow analysis of the data, other commenters dispute that position.

16. The Sixth Diversity Further Notice also sought input concerning proposed modifications to Form 323 designed to reduce filing burdens in the Commission's Review of Media Bureau Data Practices proceeding. For instance, the Commission sought comment on an NAB suggestion to eliminate a requirement that a filer disclose the other attributable newspaper and broadcast interests of attributable parties listed in the filing, arguing that portion of the submission is particularly burdensome. In comments, NAB reiterates its support and no commenters oppose it.

17. In December 2010, the Commission initiated a rulemaking proceeding in which it proposed to update CORES in an effort to enhance the Commission's data collection efforts and to

⁵ Sixth Diversity Further Notice, 28 FCC Rcd at 472, para. 18. The Commission also noted that it has already adopted a Privacy Act System of Records for CORES and with respect to the Form 323 requirement, which applies to any personally identifiable information required by Form 323 and CORES in connection with the CORES FRN registration process. Id.; see also Reply Letter at 7-8; Privacy Act System of Records, 74 FR 59978, Nov. 19, 2009 (system of records FCC/MB-1 for Form 323); Privacy Act System of Records, 71 FR 17234, Apr. 5, 2006 (system of records FCC/OMD-9 for CORES). These System of Records Notices ("SORNS") can be viewed at <http://www.fcc.gov/encyclopedia/privacy-act-information#systems> (visited Dec. 15, 2014).

improve customer interface with CORES.⁶ The Commission noted that, “[s]ince the creation of CORES, entities have been able to obtain multiple FRNs in order to permit different members of their corporate family to obtain their own individual FRNs, regardless of whether those entities have different taxpayer identification numbers” The CORES Notice also stated that the Commission has had difficulty using CORES to identify all FRNs held by the same entity when entities have provided inconsistent TINs. To address these issues, the CORES Notice sought comment on two proposals for requiring entities and individuals to rely primarily upon a single CORES FRN. Under Option 1, an entity would be required to use a single ten-digit FRN for all of its dealings with the FCC, but would have the ability to create an unlimited number of sub-accounts that could be assigned to organizational units, such as a geographic district served by the entity or a distinct line of business conducted by the entity, or even to particular employees. Option 2 would enable entities that currently hold multiple FRNs to retain all of their various FRNs, which would be electronically linked to each other within the Commission’s database through the assignment of an identical prefix that would precede each of the entity’s ten-digit FRNs. Commenters generally support Option 2 as a mechanism for limiting parties’ use of multiple CORES FRNs.

III. DISCUSSION

18. We propose implementing an RUFRN for use on Form 323 filings. We tentatively conclude that this proposal will provide reasonable assurance of unique identification of individuals within our broadcast ownership report database, which is critical to the improvement of the Commission’s data gathering practices. We also tentatively conclude that RUFRNs provide superior data quality to SUFRNs and could enable the Commission to implement a burden-reducing form modification. We next consider ways in which the RUFRN proposal is consistent with other Commission data gathering and policy initiatives. Thereafter we propose to apply RUFRNs to NCE filings if additional Commission action is undertaken with respect to broadcast ownership reporting in the NCE industry segment. We believe that the quality of the Commission’s security systems and the Privacy Act are not a barrier to the

⁶ See generally CORES Notice, 25 FCC Rcd at 17401, para. 1. The CORES Notice was published in the Federal Register on February 11, 2011. See Amendment of Part 1 of the Commission’s Rules, Concerning Practice and Procedure, Amendment of CORES Registration System; Notice of Proposed Rulemaking, MD Docket No. 10-234, FCC 10-192, 76 FR 5652, February 1, 2011. Comments and Reply Comments were due on March 3, 2011 and March 18, 2011, respectively. See id.

system proposed. In addition, we tentatively conclude that the RUFRN proposal is not burdensome. We ask for comment on whether SUFRNs should remain available in the case of recalcitrant individuals. We seek comment on the costs and benefits of all the proposals contained herein and any alternatives commenters propose.

19. RUFRNs Support the Commission's Data Gathering and Policy Making Initiatives. We continue to believe, as described below, that the Commission must be able to identify parties reported on broadcast ownership reports uniquely for purposes of creating reliable and usable data in support of policy initiatives promoting diverse ownership. Our RUFRN proposal is important to the Commission's ongoing mission to improve, streamline, and modernize the way it collects and uses data. We wish, however, to balance these Commission objectives against the privacy, data security, and identity theft concerns of individuals with attributable interests in broadcast stations. The Commission is particularly sensitive to concerns that have been expressed in the existing record in the Diversity proceeding concerning the proposal that individual attributable interest holders of broadcast stations provide an SSN to the Commission for purposes of broadcast ownership reporting.

20. Accordingly, we propose to establish an alternative mechanism within CORES to identify individuals uniquely that does not require submission of a full SSN to the Commission. This method would allow an individual to obtain an RUFRN from CORES by submitting an alternate set of identifying information – including full name, residential address, date of birth, and last four digits of the individual's SSN. The CORES system will be programmed to verify that the submitted information is complete and does not duplicate any information that is already associated with an RUFRN in CORES. We also propose that when an applicant obtains an RUFRN the individual will be asked to list all CORES FRNs registered to the individual and all SUFRNs that individual previously used in any broadcast ownership report filings since the 2009 biennial reporting cycle. We tentatively conclude that such disclosures will allow the Commission to identify CORES FRNs, RUFRNs, and SUFRNs that identify the same individual, promoting the usefulness of the broadcast ownership data for purposes of electronic searching, aggregating, and cross-referencing and for trend analysis. Once an RUFRN is issued, we propose that

any ownership report filing that lists that specific individual would be required to include that RUFRN. We propose that attributable interest holders would not be required to obtain or use an RUFRN for Form 323 (or Form 323-E if the filing obligations proposed in the Fourth Diversity Further Notice are extended to NCEs) and could instead opt to use a CORES FRN. Like SUFRNs, we propose that RUFRNs would be usable only on broadcast ownership reporting forms and only for individuals (not entities) reported as attributable interest holders. We seek comment on these proposals and tentative conclusions and on the costs and benefits of using an RUFRN as described herein for broadcast ownership reporting purposes.

21. The Commission has previously recognized that Sections 257 of the 1996 Act and 309(j) of the Act support its efforts to gather the ownership data contained in Form 323. In the 1998 Biennial Review Order, the Commission concluded that, in order to fulfill its statutory mandates, it must collect race, gender, and ethnicity information from all interest holders reported on Form 323. Collecting these data enables the Commission not only to assess the current state of minority and female ownership of broadcast stations but also to determine the success of programs that are designed to facilitate opportunities for women- and minority-owned businesses and to promote a diversity of media voices. Just as it is essential for the Commission to collect these ownership data to fulfill its mandates, it is important that these data be reliable, aggregable, and useful for studies and trend analysis. The Commission has recognized that CORES FRNs offer a unique identifier and therefore play an important role in promoting the integrity of the data collected.

22. We tentatively find that flaws in the current practices related to the reporting of SUFRNs for individuals listed on Form 323 compromise the integrity of the data and thereby frustrate the Commission's attempts to fulfill its statutory mandates under section 257 and section 309(j). Because our policy initiatives are dependent on the quality of the data collected, we tentatively conclude that requiring an FRN generated by CORES, either through existing mechanisms or via the proposed method to obtain an RUFRN, for all reportable interest holders on Forms 323 (and 323-E if proposals in the Fourth Diversity Further Notice are adopted) is essential to improve the quality and usability of the data collected. We seek comment on these tentative conclusions.

23. We tentatively conclude that having reasonable assurance that attributable interest holders are uniquely identified on ownership reports in a manner that ensures the data can be meaningfully searched, aggregated, and cross-referenced electronically is crucial to data quality and usability. In the Sixth Diversity Further Notice we tentatively concluded that TINs/SSNs within CORES were necessary as underlying unique identifiers of individuals. Would the RUFRN system described provide sufficient assurances that individuals are uniquely identified? For instance, are the specific pieces of identifying information described in our proposal (full name, residential address, date of birth, and last four digits of the individual's SSN) sufficient to provide a reasonable basis for determining that an individual identified is unique within the CORES system? Are there a sufficient number of criteria included in the proposal or are there additional pieces of information that would improve the reliability of the data? Are there additional or different pieces of information that better enable the Commission to ensure that individuals are uniquely identified? If so, what additional or different pieces of information should the Commission require? What risk would remain that the system could not uniquely identify individuals using these pieces of information?

24. A commenter to the Sixth Diversity Further Notice asserts that unique identification of individuals in ownership data is not necessary to study broadcast ownership trends over time. This argument is not convincing because it presumes incorrectly that the only utility of the data is to track how many stations have minority and/or female owners. Other questions relevant to evaluating trends in minority and female ownership include how many individual minority and/or female owners exist at a given point and how those numbers change over time. The Commission cannot count unique individual owners without a mechanism to identify individuals uniquely. The same commenter also states that the fact that ownership reports are submitted under penalty of perjury is sufficient to ensure that parties report race or gender information on ownership report filings accurately. But, as noted above, examination of ownership reports from 2009, 2011, and 2013 revealed numerous data reporting errors due in part to the complexity of the information required to accurately file the form. We have no reason to believe that these errors were the result of filers attempting to deliberately mislead the Commission. We tentatively

conclude that the presence of a unique identifier will improve the quality of our ownership data by permitting errors to be identified and remedied. For example, since an individual's race cannot change over time, the presence of the same individual's FRN on multiple reports, along with inconsistent race information could indicate one or more reporting errors that can then be cured. We seek comment on these positions.

25. RUFRNs Provide Superior Data Quality to SUFRNs. We tentatively conclude that the RUFRN would provide superior data quality to the SUFRN and we seek comment on that tentative conclusion. The SUFRN was devised as merely a computer generated number created by clicking a button within Form 323 itself and not backed by any identifying information. The Commission collects no information when the system generates a new SUFRN, and there is no database analogous to CORES that contains uniquely identifying information associated with SUFRNs. The SUFRN therefore offers the Commission no way to cross reference or trace back reported information to a single individual. Because the Commission cannot determine whether particular individuals hold one or more SUFRNs or whether a particular SUFRN is being used to identify one or more individuals, it cannot reliably examine the complete attributable holdings of an individual reported with a SUFRN (either at a specific time or over time), or search, aggregate, and cross-reference our ownership data using Commission systems. Any attempt at such analysis would require manual consideration of every single entry where a SUFRN appears together with a subjective analysis of other textual information contained on the form or available from other public sources. Manual, subjective analysis of thousands of Form 323 entries using various sources of information compromises data integrity and data utility. On the other hand, we tentatively conclude that since RUFRNs will be backed by identifying information, and since CORES will not issue multiple RUFRNs for the same identifying information, RUFRNs can be relied upon to identify individuals uniquely. We seek comment on our view that the qualities of the proposed RUFRN provide superior data quality to the SUFRN.

26. As noted above, some commenters in the Diversity proceeding argued that CORES FRNs cannot serve as unique identifiers because, for example, multiple FRNs can be obtained for a single

TIN/SSN, an FRN might be associated with no TIN or an incorrect TIN, and outside researchers do not have access to underlying TIN information within CORES. We observe that the CORES proceeding has proposed several options to resolve some of these issues. Even as the Commission continues to examine those issues through its CORES reform process, we tentatively conclude, for several reasons, that, notwithstanding these possibilities, CORES FRNs and RUFRNs are still superior to SUFRNs for the purpose of broadcast ownership reports. To begin with, exceptions permitting an individual or entity to obtain a CORES FRN without a TIN are legitimately available in a limited number of cases that would not be expected to compromise the overall ownership data submitted. And even though CORES currently permits an individual or entity to obtain multiple FRNs with a single TIN, the Commission can identify all FRNs that relate to a single TIN. Also, we expect that individuals and entities will comply with our rules and provide accurate information during the CORES registration process to the greatest extent possible. While the Commission's obligation to hold the TIN confidential does limit the direct utility of the TIN to outside researchers as a unique identifier, that limitation does not decrease the benefits for data integrity and utility to the Commission. With respect to the RUFRN proposal, we anticipate that the specificity of the identifying information required and the fact that a number of pieces of information are required will be sufficient to provide the Commission with reasonable certainty that the information identifies a unique filer within the CORES system. Based on our experience in the 2009, 2011, and 2013 reporting cycles, we tentatively conclude that the RUFRN proposal will improve the reliability and usability of the broadcast ownership report database, in furtherance of our statutory mandates. We seek comment on these conclusions.

27. RUFRNs May Enable Burden-Reducing Form Modification. As noted above, the Commission and commenters have identified errors in filings submitted to the Commission over the last three filing periods. We tentatively conclude that some such errors could be reduced by simplifying the form and making it less burdensome to complete and submit. Specifically, the record reflects proposals that would eliminate a filer's obligation to disclose other attributable broadcast interests of attributable parties listed in the filing. We tentatively conclude that in order to implement this burden-reducing form

modification without compromising the scope and content of the information collected, the Commission requires a unique identifier to allow the filings to be electronically searched and cross-referenced within a single filing period and over time. We tentatively conclude that the existence of unique identifiers will permit the Commission to make this modification while maintaining the integrity of its ownership data, thereby reducing burdens on filing parties and improving the quality of the information submitted to the Commission. We seek comment on these conclusions.

28. RUFRN Application in NCE Context. We specifically seek additional comment concerning the proposal to use RUFRNs for Form 323-E if the pending proposal in the Fourth Diversity Further Notice to modify NCE ownership reporting practices to correspond to commercial requirements and the proposal in the Sixth Diversity Further Notice to extend FRN requirements to noncommercial stations are adopted. We tentatively conclude that if the Commission does modify the Form 323-E requirements as described in the Fourth Diversity Further Notice then a CORES-generated FRN, either a traditional SSN-based CORES FRN or the RUFRN proposed herein, is a sufficient and appropriate tool for the unique identification of individuals with attributable interests in NCEs for the same reasons and in the same manner as commercial stations. Accordingly, we propose to permit an individual listed on Form 323-E to obtain and provide an RUFRN, in lieu of a CORES FRN, for use on broadcast ownership filings. We invite comment on these tentative conclusions and on the foregoing proposal. As described above, we note that several commenters to the Sixth Diversity Further Notice argue that the CORES FRN requirement would be unduly burdensome for NCEs because an SSN disclosure requirement would discourage people from serving on the boards of NCE stations and licensees would have difficulty obtaining SSNs from board members who may be government officials. We seek comment on how and whether these concerns would arise if RUFRNs were made available for use in broadcast ownership reports. We note that officers and directors of NCE stations already are reported on Form 323-E and questions related to the propriety of requiring disclosure of race, gender, and ethnicity information on Form 323-E are pending pursuant to the Fourth Diversity Further Notice. Here we seek comment on specifically whether there are unique considerations with respect to NCE stations that would lead to a

different conclusion for NCEs than for commercial stations with regard to the information proposed to be included to obtain an RUFRN. If so what are those unique considerations? Are there other alternatives for unique identification of individuals in the NCE context that would improve the quality, usability, and reliability of our broadcast ownership data and/or help ensure that our broadcast ownership data can be searched, aggregated, and cross-referenced electronically? We invite comment on the application of RUFRNs to NCEs in the event that the pending proposals in the Fourth Diversity Further Notice are adopted.

29. Security of Commission Systems. In the Sixth Diversity Further Notice, the Commission sought comment on any security concerns related to the requirement that interest holders submit an SSN, noting that only the FRN is made public and the SSN is not disclosed on any Commission application or form, including Forms 323 and 323-E. Commenters raised concerns that a CORES FRN requirement for individuals will open individuals to threats of identity theft. Some commenters pointed to a system breach described in a GAO report on information security and suggested that the Commission's systems are vulnerable to a security breach.

30. We agree with commenters that privacy and security with respect to personally identifiable information are paramount, and we believe that the steps taken and the procedures in place assure the security of the Commission's systems. The Commission is not aware of any breaches to CORES. In addressing similar security concerns from commenters, the Commission wrote in 2009 that the CORES architecture exceeds Federal guidelines and that its databases are behind several firewalls. The Commission also explained that administrative access to the CORES application is limited and that all transmission of non-public data is encrypted. Furthermore, the safeguards in place in 2009 have been improved. Certain improvements were underway prior to completion of the Information Security GAO Report, and that report also provided the Commission with additional, valuable recommendations for continuing to strengthen our security environment. We have implemented enhanced perimeter controls, malware protection, and monitoring devices and upgraded workstations to operating systems with improved security. The Commission's security architecture has strict operational controls in place that

comply with National Institute of Standards and Technology guidance. As the Commission explained to OMB in 2009, system servers are located behind several firewalls and other security controls to protect CORES data from intrusion by outsiders as well as the general Commission population. Administrative access to CORES remains limited to only certain known internal workstations and all servers are monitored by automated tools and operational procedures. Moreover, the Commission made several upgrades to all of its systems, including CORES, to ensure that its systems remain secure. Security will continue to be one of our highest priorities. In light of the foregoing, we seek comment on whether the elimination of the need for individual attributable interest holders to submit an SSN eliminates the privacy and identity theft concerns existing in the current record. If not, what privacy or identity theft concerns remain and how can they be addressed? Are such concerns outweighed by the importance of the data collection?

31. Privacy Act. We tentatively conclude that the Privacy Act does not bar the adoption of the RUFRN requirements described herein. The Sixth Diversity Further Notice sought comments on whether the Privacy Act was a barrier to adoption of the CORES FRN requirement. No commenters asserted that the Privacy Act was a barrier to the requirement for individuals with attributable interests in commercial entities. With respect to application of the CORES FRN requirement to Form 323-E if the proposals in the Fourth Diversity Further Notice are adopted, several commenters to the Sixth Diversity Further Notice argue that the Privacy Act bars application of the SSN requirement in the NCE context. We find that elimination of the SSN requirement from the list of identifying information that is required in conjunction with broadcast ownership reporting would further ensure that the Privacy Act is not an impediment to the proposed RUFRN requirement. Also as described above, we tentatively conclude that unique identification of individuals is essential for ownership data quality, utility, and reliability, which are critical components of any future policy initiatives to promote ownership diversity consistent with our statutory mandate under the Communications Act. Further, the Commission has already adopted a Privacy Act SORN for CORES and with respect to the Form 323 requirement, which applies to any personally identifiable information required by Form 323 and CORES in connection with the CORES

FRN registration process, and to the extent necessary any modifications required by the implementation of the RUFRN system for Form 323 or Form 323-E can be addressed with modifications to the SORN. We request comment on these tentative conclusions.

32. RUFRNs Are Not Burdensome, and the Benefits Outweigh the Costs. We continue to believe that obtaining a CORES FRN imposes minimal costs and burdens, if any, on individuals or filers. As noted in the Sixth Diversity Further Notice, registering for a CORES FRN is a one-time process that takes a few moments to complete. An individual that already has obtained a CORES FRN may continue to use his or her CORES FRN for Form 323 filings, and need not obtain a RUFRN. Moreover, an individual that wishes to obtain a RUFRN can easily locate previously-registered CORES FRNs through CORES. We tentatively conclude that permitting individuals holding attributable interests in one or more broadcast licensees to obtain a RUFRN in lieu of obtaining a CORES FRN would impose minimal costs or other burdens. We seek comment on these tentative conclusions and on any potential burdens inherent in the RUFRN proposal. We seek input on alternatives that might reduce or eliminate such burdens as well as the costs and benefits of such alternatives. To the extent possible, commenters should quantify any identified costs and benefits. We note that the vast majority of individuals reported on Form 323 have obtained and reported CORES FRNs, and we believe it is likely that will continue to be the case for future broadcast ownership filing obligations. Individuals who already have a CORES FRN need not obtain an RUFRN and may continue to use the existing number. Moreover, any individual that wishes to obtain a CORES FRN instead of an RUFRN will be able to do so. Additionally, as explained above, the existence of a unique identifier that can be cross-referenced may make modifications of the reports possible that could reduce the burdens on all filers and, thereby, further improve the quality of the ownership data submitted to the Commission. As such, we tentatively find that the benefits of improved data collection outweigh any de minimis costs or burdens associated with obtaining an FRN described herein and we seek comment on that conclusion. To the extent possible, commenters should quantify relative costs and benefits.

33. Limited Availability of SUFRNs. We seek further comment concerning the elimination of the availability of SUFRNs for broadcast ownership reports. The Sixth Diversity Further Notice solicited input on whether to retain the SUFRN in the event that reportable individuals are unwilling to provide their SSNs to third parties or unwilling to obtain and provide CORES FRNs. In the event that a SUFRN is reported for an individual, the Sixth Diversity Further Notice explained that the Commission could use its enforcement authority against individuals who failed to obtain a CORES FRN. Commenters generally support the proposal to retain the SUFRN for this limited purpose and oppose the Commission's use of its enforcement authority. We seek comment on whether the SUFRN should continue to be available to Form 323 filers (and Form 323-E filers if the proposals in the Fourth Diversity Further Notice are adopted), in the event that after a filer has used reasonable and good faith efforts, reportable individuals are unwilling to provide their identifying information or unwilling to obtain and provide a CORES FRN or RUFRN themselves. Would this limited availability of SUFRNs appropriately protect the position of filers in the case of recalcitrant interest holders? Should the Commission require filers to take specific steps to substantiate that they have made a reasonable good faith efforts? If so, what steps should be required? For instance, should the Commission expect that a filer will instruct an individual about the obligation to supply a filer with a CORES FRN or RUFRN or to provide the filer with the identifying information sufficient to obtain one of these numbers on the individual's behalf? Should the filer be expected to instruct such an individual about potential enforcement action? Should the filer itself be exempt from enforcement action only if such steps are substantiated? Should an instruction be included on Form 323 (and Form 323-E if the proposals in the Fourth Diversity Further Notice are adopted) informing reportable interest holders of their obligations and alerting them to the risk of enforcement action for the failure to provide a CORES FRN or RUFRN or to permit a CORES FRN or RUFRN to be obtained? We seek comment on these issues.

IV. PROCEDURAL MATTERS

A. Filing Requirements

34. Ex Parte Rules. The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. 47 CFR 1.1200 et seq. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). 47 CFR 1.1206(b). In proceedings governed by rule 1.49(f), 47 CFR 1.49(f), or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules.

35. Comments and Reply Comments. Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

36. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

37. Availability of Documents. Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, CY-A257, Washington, DC, 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0267 (voice), (202) 418-0432 (TTY), or bill.cline@fcc.gov. These documents also will be available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII,

Word 97, and Adobe Acrobat. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-1400 (voice), (202) 418-0432 (TTY).

38. Information. For additional information on this proceeding, contact Jake Riehm at (202) 418-2166 or Warren Firschein at (202) 418-0844. Press inquiries should be directed to Janice Wise at (202) 418-8165.

B. Paperwork Reduction Act Analysis

39. Initial Paperwork Reduction Act Analysis. This Second FNPRM and Seventh FNPRM seeks comment on potential new or revised information collection requirements with regard to CORES, FCC Form 323, and FCC Form 323-E. The Commission invites the general public, the Office of Management and Budget (“OMB”) and other Federal agencies to comment on the information collection requirements. This Notice may result in new or revised information collection requirements. If the Commission adopts any new or revised information collection requirements, the Commission will publish a notice in the Federal Register inviting additional public comment on the requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” On October 19, 2009, OMB approved the FCC’s proposal to implement a CORES FRN requirement for all individuals holding attributable interests in the licensee reported on Form 323. That requirement went into effect as of October 30, 2009.

40. In addition to filing comments with the Secretary, a copy of any PRA comments on the proposed collection requirements contained herein should be submitted to the Federal Communications Commission via email to PRA@fcc.gov and to Nicholas A. Fraser, Office of Management and Budget, via email to nfraser@omb.eop.gov or via fax at 202-395-5167.

V. INITIAL REGULATORY FLEXIBILITY ANALYSIS

41. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible economic impact on small entities by the policies and rules proposed in this) Second FNPRM and Seventh FNPRM (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.

A. Need for, and Objectives of, the Proposed Rules

42. Currently, filers of Form 323 (Ownership Report for Commercial Broadcasters) must provide an FCC Registration Number (FRN) generated via the Commission's Registration System (CORES) for each reported attributable party. To obtain a CORES FRN, an individual must submit his or her social security number (SSN) to the Commission through CORES. CORES FRNs therefore can be used to uniquely identify individuals reported on Form 323, which is crucial to the quality and utility of the Commission's broadcast ownership data. However, if a filer uses diligent and good-faith efforts to obtain an SSN from an individual that must be reported on Form 323 in order to generate a CORES FRN, but is unable to do so, the filer may provide a Special Use FRN (SUFRN) for that individual. Because the SUFRN generation process does not require submission of an SSN, or any other identifying information, SUFRNs do not provide a reliable means of linking a reported interest holder to a unique individual. The existence of SUFRNs therefore undermines the usefulness and integrity of the Commission's broadcast ownership data.

43. To address this issue, the Notice invites comment on a proposal to create a new type of FRN within CORES – a Restricted Use FRN (“RUFRN”) – for use on Form 323. Under the proposal set forth in the Notice, an individual requesting an RUFRN would be required to submit his or her name, date of birth, and residential address, along with the last four digits of his or her SSN, to CORES. Once

obtained, an individual would be required to use the RUFRN on all current and future Form 323 filings. The Notice seeks comment on this RUFRN proposal, including input concerning the costs, benefits, and possible alternative approaches.

44. The Notice explains that the Commission's Fourth Diversity Further Notice requested input on adopting modifications to Form 323-E (Ownership Report for Noncommercial Broadcast Stations) similar to those previously adopted for Form 323. The Sixth Diversity Further Notice specifically proposed requiring Form 323-E filers to provide a CORES FRN for all attributable parties. In light of the foregoing, the Notice seeks comment concerning the future application of the RUFRN proposal to Form 323-E (if Form 323-E is modified along the lines proposed in the Fourth Diversity Public Notice).

45. Finally, the Notice indicates that the Sixth Diversity Further Notice solicited input on whether to retain the availability of SUFRNs for ownership report filings in the event that reportable individuals are unwilling to provide their SSN to a third party or unwilling to obtain and provide a CORES FRN. Similarly, the Notice asks whether, if the RUFRN proposal is adopted, SUFRNs should continue to be available to Form 323 filers (and Form 323-E filers if the proposals in the Fourth Diversity Further Notice are adopted), in the event that after a filer has used reasonable and good faith efforts, reportable individuals are unwilling to provide their identifying information or unwilling to obtain and provide a CORES FRN or RUFRN themselves.

B. Legal Basis

46. This Notice is adopted pursuant to sections 1, 2(a), 4(i)-(j), 257, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i, j), 257, 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

47. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the

term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction” under Section 3 of the Small Business Act. In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

48. Television Broadcasting. The SBA defines a television broadcasting station that has no more than \$38.5 million in annual receipts as a small business. The definition of business concerns included in this industry states that establishments are primarily engaged in broadcasting images together with sound. These firms operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These firms also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. Census data for 2007 indicate that 808 such firms were in operation for the duration of that entire year. Of these, 709 had annual receipts of less than \$25.0 million per year and 99 had annual receipts of \$25.0 million or more per year. Based on this data and the associated size standard, the Commission concludes that the majority of such firms are small.

49. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,387. According to Commission staff review of the BIA/Kelsey, LLC’s Media Access Pro Television Database on November 25, 2014, about 1,276 of an estimated 1,387 commercial television stations (or approximately 92 percent) had revenues of \$38.5 million or less. The Commission has estimated the number of licensed noncommercial educational television stations to be 395. We do not have revenue data or revenue estimates for noncommercial stations. These stations rely primarily on grants and contributions for their operations, so we will assume that all of these entities qualify as small businesses. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the filing requirements for FCC Form

323 or Form 323-E, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

50. An element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of “small business” is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

51. Radio Broadcasting. The SBA defines a radio broadcasting entity that has \$38.5 million or less in annual receipts as a small business. Business concerns included in this industry are those “primarily engaged in broadcasting aural programs by radio to the public.” Census data for 2007 indicate that 2,926 such firms were in operation for the duration of that entire year. Of these, 2,877 had annual receipts of less than \$25.0 million per year and 49 had annual receipts of \$25.0 million or more per year. Based on this data and the associated size standard, the Commission concludes that the majority of such firms are small.

52. Further, according to Commission staff review of the BIA/Kelsey, LLC’s Media Access Pro Television Database on November 25, 2014, about 11,337 (or about 99.9 percent) of 11,348 commercial radio stations in the United States have revenues of \$38.5 million or less. The Commission has estimated the number of licensed noncommercial radio stations to be 4,085. We do not have revenue data or revenue estimates for these stations. These stations rely primarily on grants and contributions for their operations, so we will assume that all of these entities qualify as small businesses. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to filing requirements for FCC Form 323 or Form 323-E, because the

revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

53. In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

54. Class A TV and LPTV Stations. The rules and policies adopted herein apply to licensees of low power television (“LPTV”) stations, including Class A TV stations and, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$38.5 million in annual receipts. As of September 30, 2014, there are approximately 430 licensed Class A stations and 2,115 licensed LPTV stations. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA’s definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

55. There may be changes to reporting or recordkeeping requirements if the Commission adopts the RUFRN proposal for Form 323 and/or Form 323-E. In the event that the RUFRN proposal is

adopted for the Form 323 and/or Form 323-E, filers will have the option to obtain and report a unique identifier for individual attributable interest holders that does not require submission of a full SSN to the Commission. Adoption of this proposal will allow an individual to obtain an RUFRN from CORES by submitting an alternate set of identifying information. Individuals would not be required to obtain or report an RUFRN on the Form 323 and/or Form 323-E – instead, individuals could obtain and report a CORES FRN. An individual who has provided a CORES FRN on one or more previous ownership filings may continue to use that CORES FRN going forward. There also may be changes to reporting or recordkeeping requirements if the Commission limits or eliminates that availability of SUFRNs for broadcast ownership reports. Filers may be obligated to instruct individuals about their obligation to supply the filer with a CORES FRN or RUFRN or to provide the filer with the information sufficient to obtain one of these identifiers on the individual's behalf. A filer may also be required to inform individuals about potential enforcement action for failure to obtain or report a CORES FRN or RUFRN. Moreover, if a filer reports an SUFRN for an individual interest holder, the filer may be required to show that the filer made reasonable good faith efforts to obtain a CORES FRN or RUFRN, or the information necessary to obtain a CORES FRN or RUFRN, on the individual's behalf.

E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

56. The RFA requires an agency to describe any significant alternatives that might minimize any significant economic impact on small entities. Such alternatives may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

57. As noted, we are directed under law to describe any such alternatives we consider, including alternatives not explicitly listed above. The Notice proposes to allow individuals reported on

Form 323 to obtain and provide an RUFRN in lieu of a traditional CORES FRN. Similarly, the Notice proposes making RUFRNs available to Form 323-E filers in the event that Form 323-E is modified as proposed in the Fourth Diversity Further Notice. The Notice also proposes eliminating the availability of SUFRNs for Form 323 and Form 323-E filings. In the alternative, the Commission could decide not to enact the RUFRN proposal contained in the Notice and not to modify the availability of SUFRNs. The Commission also could defer these actions until a later time. Additionally, the Commission could decide to treat noncommercial broadcasters differently from commercial broadcast stations for purposes of uniquely identifying and tracking individual attributable interest holders reported on the 323-E. While decisions to adopt the RUFRN proposal and eliminate the Special Use FRN might result in increased burdens on reporting parties, the Notice tentatively concludes that any such burdens would be minimal and that the benefits of having a unique identifier for data quality, searchability, cross-referencing and aggregation purposes in order to further the Commission's goal of advancing diversity of ownership in the broadcast industry would outweigh those burdens. A unique identifier is necessary to improve the quality of the data collected on the Form 323. The Commission also seeks comment on whether the Special Use FRN should be available solely in instances where, after reasonable and good faith efforts, filers are unable to obtain a CORES FRN or RUFRN from an individual with reportable interests. This alternative could reduce the burden for those filers who are unable to, after reasonable and good faith efforts, to obtain a CORES FRN or RUFRN from an individual attributable interest holder, while ensuring that the filer will be able to timely submit the Form 323. This will allow the Commission to identify the individual with a reportable interest that has failed to provide a CORES FRN or RUFRN.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

58. None.

VI. ORDERING CLAUSES

59. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 1, 2(a), 4(i,j), 257, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i)-(j), 257, and 303(r), the Second FNPRM and Seventh FNPRM **IS ADOPTED**.

60. **IT IS FURTHER ORDERED** that, pursuant to the authority contained in sections 1, 2(a), 4(i, j), 257, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i, j), 257, 303(r), **NOTICE IS HEREBY GIVEN** of the proposals described in this Second FNPRM and Seventh FNPRM.

61. **IT IS FURTHER ORDERED** that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of the Second FNPRM and Seventh FNPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,
Secretary.

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